



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the *Act*) for:

- an Order of Possession for Unpaid Rent or Utilities, pursuant to sections 46 and 55 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:31 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

### Preliminary Issue – Service of Documents

The landlord provided sworn testimony that around 3:00 p.m. on September 26, 2019 the landlord personally served tenant D.P. with the Notice of Dispute Resolution Proceeding package at the rental unit. The landlord testified that there were no witnesses to the service, as such the landlord was unable to provide any proof of service.

The landlord testified that the tenants were previously served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (10 Day Notice) on September 14, 2019. The landlord testified that he personally served tenant D.P. at the rental unit and submitted a proof of service form in support of his testimony, however the form was not signed by the witness to the service. I also note there was inconsistent information provided on the proof of service form as it indicated on page one that the landlord hand delivered the notice to the tenant, but on page two of the form, the witness indicated that he witnessed the landlord attach the notice to the door.

I advised the landlord during the hearing that the 10 Day Notice submitted by the landlord to the Residential Tenancy Branch dispute website was a blank form, with no information at all provided on the form. I advised the landlord that I would be unable to confirm that the notice met the form and content requirements of section 52 of the *Act* without a copy of the notice before me. The landlord testified that he had a copy of the 10 Day Notice and confirmed that he could provide to the Residential Tenancy Branch a copy of the 10 Day Notice and a copy of the proof of service signed by the witness by no later than 4:00 p.m. the day of the hearing.

The landlord was able to submit the required documents by the above-noted deadline. I note that the 10 Day Notice named both tenant D.P. and tenant D.D. I also note that the landlord's Application for Dispute Resolution named both tenants. As the landlord testified that there was no written tenancy agreement, I find I must determine the named tenants in this matter on the basis of the submitted evidence before me. As such, I find that since tenants D.P. and D.D. are both named on the landlord's Application and on the 10 Day Notice, they are both tenants to the verbal tenancy agreement.

As both tenants were named on the landlord's Application, both tenants were required to be served individually with the Notice of Dispute Resolution Proceeding package, which includes the landlord's Application for Dispute Resolution and the hearing information, to ensure both parties were provided with the opportunity to attend the hearing, as set out in Rule 3.5 of the Residential Tenancy Branch Rules of Procedure, as follows:

### 3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

This requirement is further explained in Residential Tenancy Policy Guideline #12. Service Provisions, which states, in part, as follows:

All parties named on an application for dispute resolution must be served separate notice of proceedings, including any supporting documents submitted with the application, as set out in the Legislation. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

...

**i. Personal Service**

- Where a landlord is personally serving a tenant, the landlord must leave a copy with the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. The landlord must leave a copy for each co-tenant.

As the landlord only provided testimony that he personally served tenant D.P., I do not find that both tenants named on the landlord's Application for Dispute Resolution and on the 10 Day Notice were served with the Notice of Dispute Resolution Proceeding package for this hearing.

As such, the landlord's Application is dismissed with leave to reapply due to an issue with service of documents.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent and utilities? Is the landlord entitled to recover the cost of the filing fee for this application from the tenants?

Conclusion

The landlord's Application is dismissed with leave to reapply due to an issue with service of documents.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 05, 2019

---

Residential Tenancy Branch